

EXHIBIT B

ATSI COMMUNICATIONS INC/DE (AT SX)

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EX-10.1

SECURITIES PURCHASE AGREEMENT
8-K Filed on 10/19/2000 - Period: 10/16/2000
File Number 001-15687



Exhibit 10.1

SECURITIES PURCHASE AGREEMENT

SECURITIES PURCHASE AGREEMENT (this "Agreement"), dated as of October 11, 2000, by and among AMERICAN TELESOURCE INTERNATIONAL, INC., a Delaware corporation, with headquarters located at 6000 NW Parkway, Suite 110, San Antonio, Texas 78249 ("Company"), and each of the purchasers set forth on the signature pages hereto (the "Buyers").

WHEREAS:

A. The Company and the Buyers are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Rule 506 under Regulation D ("Regulation D") as promulgated by the United States Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended (the "1933 Act");

B. The Company has authorized a new series of preferred stock, designated as 6% Series E Cumulative Convertible Preferred Stock (the "Series E Preferred Stock"), having the rights, preferences and privileges set forth in the Certificate of Designations, Rights and Preferences attached hereto as Exhibit "A" and as corrected in the Certificate of Correction of the Certificate of Designations, Rights and Preferences filed with the State of Delaware on October 11, 2000 and the Certificate of Correction of the Certificate of Designations, Rights and Preferences filed with the State of Delaware on October 12, 2000 (the "Certificate of Designation");

C. The Series E Preferred Stock is convertible into shares of common stock, \$.001 par value per share, of the Company (the "Common Stock"), upon the terms and subject to the limitations and conditions set forth in the Certificate of Designation;

D. The Company has authorized the issuance to the Buyers of warrants, in the form attached hereto as Exhibit "B", to purchase Three Million Six Hundred Thirty-Six Thousand Three Hundred Sixty-Four (3,636,364) shares of Common Stock (the "Closing Warrants");

E. The Buyers desire to purchase and the Company desires to issue and sell, upon the terms and conditions set forth in this Agreement, (i) an aggregate of Ten Thousand (10,000) shares of Series E Preferred Stock (such shares, together with any Series E Preferred Stock issued in replacement thereof or as a dividend thereon or otherwise with respect thereto in accordance with the terms thereof, being hereinafter collectively referred to as the "Closing Preferred Shares"), and (ii) Closing Warrants to purchase Three Million Six Hundred Thirty-Six Thousand Three Hundred Sixty-Four (3,636,364) shares of Common Stock, for an aggregate purchase price of Ten Million Dollars (\$10,000,000).

F. Each Buyer wishes to purchase, upon the terms and conditions stated in this Agreement, the number of Closing Preferred Shares and number of Closing Warrants as is set forth immediately below its name on the signature pages hereto;

G. Contemporaneous with the execution and delivery of this Agreement, the parties hereto are executing and delivering a Registration Rights Agreement, in the form attached hereto as Exhibit "C" (the "Registration Rights Agreement"), pursuant to which the Company has agreed to provide certain registration rights under the 1933 Act and the rules and regulations promulgated thereunder, and applicable state securities laws; and

NOW THEREFORE, the Company and each of the Buyers severally (and not jointly) hereby agree as follows:

1. PURCHASE AND SALE OF PREFERRED SHARES AND WARRANTS.

a. Purchase of Preferred Shares and Warrants. On each Closing

Date (as defined below), the Company shall issue and sell to each Buyer and each Buyer severally agrees to purchase from the Company such number of Closing Preferred Shares and number of Closing Warrants as is set forth immediately below such Buyer's name on the signature pages hereto. The issuance, sale and purchase of the Closing Preferred Shares and Closing Warrants shall take place at two (2) closings (each a "Closing"), the first of which is hereinafter referred to as the "First Closing" and the second of which is referred to as the "Second Closing." At the First Closing, the Company shall issue an aggregate of (i) Two Thousand Five Hundred (2,500) Closing Preferred Shares and (ii) Closing Warrants to purchase Nine Hundred Nine Thousand Ninety-One (909,091) shares of Common Stock, for an aggregate purchase price of Two Million Five Hundred Thousand Dollars (\$2,500,000) (the "First Closing Purchase Price"). At the Second Closing, the Company shall issue an aggregate of (i) Seven Thousand Five Hundred (7,500) Closing Preferred Shares and (ii) Closing Warrants to purchase Two Million Seven Hundred Twenty-Seven Thousand Two Hundred Seventy-Three (2,727,273) shares of Common Stock, for an aggregate purchase price of Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the "Second Closing Purchase Price" and, collectively with the First Closing Purchase Price, the "Purchase Price"). Subject to the satisfaction (or waiver) of the conditions thereto set forth in Section 6 and Section 7 below, (i) at the First Closing, the Company shall issue and sell to each Buyer and each Buyer shall purchase from the Company the number of Closing Preferred Shares and Closing Warrants which such Buyer is purchasing hereunder and set forth below such Buyer's name on the signature page hereto and (ii) at the Second Closing, the Company shall issue and sell to each Buyer and each Buyer shall purchase from the Company the number of Closing Preferred Shares and Closing Warrants as is set forth below such Buyer's name on the signature pages hereto.

b. Form of Payment. On each Closing Date (as defined below), each Buyer

shall pay the purchase price for the Closing Preferred Shares and the Closing Warrants to be issued and sold to it at each respective Closing. The First Closing Purchase Price shall be paid by wire transfer of immediately available funds to the Company, in accordance with the Company's written wiring instructions, against delivery of duly executed certificates representing such number of Closing Preferred Shares and Closing Warrants which such Buyer is purchasing at the First Closing. The Second Closing Purchase Price shall be paid at the First Closing by wire transfer to the account designated pursuant to an escrow agreement mutually agreed upon by the Buyer, the Company and the escrow agent (which agreement shall be attached hereto as Exhibit "D" (the "Escrow Agreement")), which funds (the "Escrowed Funds") shall be released pursuant to the Escrow Agreement at the Second Closing against delivery of duly executed certificates representing such number of Closing Preferred Shares and Closing Warrants which such Buyer is purchasing at the Second Closing. In the event the Second Closing does not occur, the Escrowed Funds shall be returned to the Buyer together with any interest thereon. At each Closing, the Company shall deliver such certificates and Closing Warrants duly executed on behalf of the Company, to such Buyer, against delivery of such applicable Purchase Price.

c. Closing Date. Subject to the satisfaction (or waiver) of the conditions

thereto set forth in Section 6 and Section 7 below, the date and time of the issuance and sale of the Closing Preferred Shares and the Closing Warrants pursuant to this Agreement (the "Closing Date") shall be (i) in the case of the First Closing, 12:00 noon Eastern Standard Time on October 11, 2000, and (iii) in the case of the Second Closing, as soon as practicable (but no later than 12:00 noon Eastern Standard Time on the fifth (5th) Trading Day (as defined in the Certificate of Designation)) following the satisfaction (or waiver) of the conditions to the Second Closing set forth in Sections 6 and 7 below (but in no event later than the fifth (5th) Trading Day following the satisfaction of the last condition set forth in Section 7(b)) or, in each case, such other mutually agreed upon time. Notwithstanding anything to the contrary contained herein, in the event the Second Closing does not occur prior to April 11, 2001, the parties to this Agreement shall have no further obligations hereunder with respect to the Second Closing. Each Closing shall occur on the applicable Closing Date at the offices of Akerman, Senterfitt & Eidson, P.A., One Southeast Third Avenue, Miami, Florida 33131, or at such other location as may be agreed to by the parties.

d. Option to Sell Additional Preferred Shares and Warrants. The

Company shall have the option to sell Five Thousand (5,000) additional shares of Series E Preferred Stock and Warrants to purchase One Million Eight Hundred Eighteen Thousand One Hundred Eighty-Two (1,818,182) shares of Common Stock to a buyer approved by each Buyer at the same price, terms and conditions as those Closing Preferred Shares and Closing Warrants purchased at the Closing by the Buyers (the "Option" and such shares of Series E Preferred Stock issued pursuant to the Option are referred to herein as the "Option Preferred Shares" and, collectively with the Closing Preferred Shares, the "Preferred Shares" and such warrants issued pursuant to the Option are referred to herein as the "Option Warrants" and, collectively with the Closing Warrants, the "Warrants");

provided, however, that the Option shall expire on (and the Closing on the

Option Preferred Shares and Option Warrants must take place prior to) December 31, 2000 at 5:00 p.m., Eastern Standard Time. In the event of the Closing of the Option, the Company, the Buyers and the purchaser of the Option Preferred Shares and Option Warrants will execute amendments to this Agreement and the Registration Rights Agreement such that the purchaser of the Option Preferred Shares and Option Warrants become parties to those agreements in the same capacity as the Buyers.

1. BUYERS' REPRESENTATIONS AND WARRANTIES. Each Buyer severally (and

not jointly) represents and warrants to the Company solely as to such Buyer that:

2.

a. Investment Purpose. As of the date hereof, the Buyer is

purchasing the Preferred Shares and the shares of Common Stock issuable upon conversion of or otherwise pursuant to the Preferred Shares (including, without limitation, (i) such additional shares of Common Stock as are issuable as a result of the events described in Articles V, VI.D(ii) or VI.F of the Certificate of Designation and Section 2(c) of the Registration Rights Agreement and (ii) the shares of Common Stock issuable pursuant to the investment options described in Article VI.E of the Certificate of Designations (the "Investment Options")) (such shares of Common Stock being collectively referred to herein as the "Conversion Shares") and the Warrants and the shares of Common Stock issuable upon exercise of or otherwise pursuant to the Warrants (the "Warrant Shares" and, collectively with the Preferred Shares, Warrants and Conversion Shares, the "Securities") for its own account and not with a present view towards the public sale or distribution thereof, except pursuant to sales registered or exempted from registration under the 1933 Act; provided, however,

that by making the representations herein, the Buyer does not agree to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption under the 1933 Act.

a. Accredited Investor Status. The Buyer is an "accredited

investor" as that term is defined in Rule 501(a) of Regulation D (an "Accredited Investor").

b. Reliance on Exemptions. The Buyer understands that the

Securities are being offered and sold to it in reliance upon specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying upon the truth and accuracy of, and the Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of the Buyer to acquire the Securities.

c. Information. The Buyer and its advisors, if any, have been

furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities which have been requested by the Buyer or its advisors. The Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other due diligence investigation conducted by Buyer or any of its advisors or representatives shall modify, amend or affect Buyer's right to rely on the Company's representations and warranties contained in Section 3 below. The Buyer understands that its investment in the Securities involves a significant degree of risk.

d. Governmental Review. The Buyer understands that no United

States federal or state agency or any other government or governmental agency has passed upon or made any recommendation or endorsement of the Securities.

e. Transfer or Re-sale. The Buyer understands that (i) except

as provided in the Registration Rights Agreement, the sale or re-sale of the Securities has not been and is not being registered under the 1933 Act or any applicable state securities laws, and the Securities may not be transferred unless (a) the Securities are sold pursuant to an effective registration statement under the 1933 Act, (b) the Buyer shall have delivered to the Company an opinion of counsel (which opinion shall be in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that the Securities to be sold or transferred may be sold or transferred pursuant to an exemption from such registration, (c) the Securities are sold or transferred to an "affiliate" (as defined in Rule 144 promulgated under the 1933 Act (or a successor rule) ("Rule 144")) of the Buyer who agrees to sell or otherwise transfer the Securities only in accordance with this Section 2(f) and who is an Accredited Investor or (d) the Securities are sold pursuant to Rule 144; (ii) any sale of such Securities made in reliance on Rule 144 may be made only in accordance with the terms of said Rule and further, if said Rule is not applicable, any re-sale of such Securities under circumstances in which the seller (or the person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (iii) neither the Company nor any other person is under any obligation to register such Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder (in each case, other than pursuant to the Registration Rights Agreement). Notwithstanding the foregoing or anything else contained herein to the contrary, the Securities may be pledged as collateral in connection with a

bona fide margin account or other lending arrangement.

f. Legends. The Buyer understands that the Preferred Shares and

the Warrants and, until such time as the Conversion Shares (including the shares of Common Stock issuable upon exercise of the Investment Options) and Warrant Shares have been registered under the 1933 Act as contemplated by the Registration Rights Agreement or otherwise may be sold pursuant to Rule 144 without any restriction as to the number of securities as of a particular date that can then be immediately sold, the Conversion Shares (including the shares of Common Stock issuable upon exercise of the Investment Options) and Warrant Shares, may bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the certificates for such Securities):

g.

"The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended. The

securities may not be sold, transferred or assigned in the absence of an effective registration statement for the securities under said Act, or an opinion of counsel, in form, substance and scope customary for opinions of counsel in comparable transactions, that registration is not required under said Act or unless sold pursuant to Rule 144 under said Act."

The legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of any Security upon which it is stamped, if, unless otherwise required by applicable state securities laws, (a) such Security is registered for sale under an effective registration statement filed under the 1933 Act or otherwise may be sold pursuant to Rule 144 without any restriction as to the number of securities as of a particular date that can then be immediately sold, or (b) such holder provides the Company with an opinion of counsel, in form, substance and scope customary for opinions of counsel in comparable transactions, to the effect that a public sale or transfer of such Security may be made without registration under the 1933 Act and such sale or transfer is effected or (c) such holder provides the Company with reasonable assurances that such Security can be sold pursuant to Rule 144. The Buyer agrees to sell all Securities, including those represented by a certificate(s) from which the legend has been removed, in compliance with applicable prospectus delivery requirements, if any.

a. Authorization; Enforcement. This Agreement and the

Registration Rights Agreement have been duly and validly authorized. This Agreement has been duly executed and delivered on behalf of the Buyer, and this Agreement constitutes, and upon execution and delivery by the Buyer of the Registration Rights Agreement, such agreement will constitute, valid and binding agreements of the Buyer enforceable in accordance with their terms.

b. Residency. The Buyer is a resident of the jurisdiction set

forth immediately below such Buyer's name on the signature pages hereto.

1. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company

 represents and warrants to each Buyer that:

a. Organization and Qualification. The Company and each of its

 Subsidiaries (as defined below), if any, is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated, with full power and authority (corporate and other) to own, lease, use and operate its properties and to carry on its business as and where now owned, leased, used, operated and conducted. Schedule 3(a) sets forth a list of all of the Subsidiaries of the Company and the jurisdiction in which each is incorporated. The Company and each of its Subsidiaries is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which its ownership or use of property or the nature of the business conducted by it makes such qualification necessary except where the failure to be so qualified or in good standing would not have a Material Adverse Effect. "Material Adverse Effect" means any material adverse effect on (i) the Securities, (ii) the business, operations, assets, financial condition or prospects of the Company and its Subsidiaries, if any, taken as a whole, (iii) the transactions contemplated hereby or by the agreements or instruments to be entered into in connection herewith or (iv) the authority or the ability of the Company to perform its obligation under this Agreement, the Registration Rights Agreement, the Certificate of Designation or the Warrants. "Subsidiaries" means any corporation or other organization, whether incorporated or unincorporated, in which the Company owns, directly or indirectly, any equity or other ownership interest.

a. Authorization; Enforcement. (i) The Company has all

 requisite corporate power and authority to file and perform its obligations under the Certificate of Designation and to enter into and perform this Agreement, the Registration Rights Agreement and the Warrants and to consummate the transactions contemplated hereby and thereby and to issue the Securities, in accordance with the terms hereof and thereof, (ii) the execution and delivery of this Agreement, the Registration Rights Agreement and the Warrants by the Company, the filing of the Certificate of Designation and the consummation by it of the transactions contemplated hereby and thereby (including without limitation, the issuance of the Preferred Shares and the Warrants and the issuance and reservation for issuance of the Conversion Shares issuable upon conversion of or otherwise pursuant to the Preferred Shares (including upon exercise of the Investment Options contained therein) and the Warrant Shares issuable upon exercise of or otherwise pursuant to the Warrants) have been duly authorized by the Company's Board of Directors and no further consent or authorization of the Company, its Board of Directors, or its stockholders is required, (iii) this Agreement has been duly executed and delivered by the Company, and (iv) this Agreement constitutes, and upon execution and delivery by the Company of the Registration Rights Agreement and the Warrants and upon execution and filing of the Certificate of Designation, each of such agreements and instruments will constitute, a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

b. Capitalization. As of the date hereof, the authorized

 capital stock of the Company consists of (i) 100,000,000 shares of Common Stock of which 67,986,944 shares are issued and outstanding, 1,601,415 shares are reserved for issuance pursuant to the Company's stock option plans, 4,422,117 shares are reserved for issuance pursuant to securities (other than the Preferred Shares and the Warrants) exercisable for, or convertible into or exchangeable for

shares of Common Stock and 15,437,962 shares are reserved for issuance upon conversion of the Preferred Shares (including upon exercise of the Investment Options) and exercise of the Warrants (subject to adjustment pursuant to the Company's covenant set forth in Section 4(h) below); and (ii) 10,000,000 shares of preferred stock, 50,000 of which are designated as Series A Cumulative Convertible Preferred Stock of which 17,703 are issued and outstanding, 2,000 of which are designated as Series B Cumulative Convertible Preferred Stock of which no shares are issued and outstanding, 500 of which are designated as Series C Cumulative Convertible Preferred Stock of which no shares are issued and outstanding and 3,000 shares of Series D Cumulative Convertible Preferred Stock of which 3,000 shares are issued and outstanding and 15,000 of which are designated as Series E Cumulative Convertible Preferred Stock. All of such outstanding shares of capital stock are, or upon issuance will be, duly authorized, validly issued, fully paid and nonassessable. Except as disclosed in Schedule 3(c), no shares of capital stock of the Company are subject to preemptive rights or any other similar rights of the stockholders of the Company or any liens or encumbrances imposed through the actions or failure to act of the Company. Except as disclosed in Schedule 3(c), as of the effective date of this Agreement, (i) there are no outstanding options, warrants, scrip, rights to subscribe for, puts, calls, rights of first refusal, agreements, understandings, claims or other commitments or rights of any character whatsoever relating to, or securities or rights convertible into or exchangeable for any shares of capital stock of the Company or any of its Subsidiaries, or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares of capital stock of the Company or any of its Subsidiaries, (ii) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of its or their securities under the 1933 Act (except the Registration Rights Agreement) and (iii) there are no anti-dilution or price adjustment provisions contained in any security issued by the Company (or in any agreement providing rights to security holders) that will be triggered by the issuance of the Preferred Shares, the Warrants, the Conversion Shares or Warrant Shares. The Company has furnished to the Buyer true and correct copies of the Company's Certificate of Incorporation as in effect on the date hereof ("Certificate of Incorporation"), the Company's By-laws, as in effect on the date hereof (the "By-laws"), and the terms of all securities convertible into or exercisable for Common Stock of the Company and the material rights of the holders thereof in respect thereto. The Company shall provide the Buyer with a written update of this representation signed by the Company's Chief Executive or Chief Financial Officer on behalf of the Company as of the Closing Date.

c. Issuance of Shares. The Preferred Shares are duly authorized

and, upon issuance in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable, and free from all taxes, liens, claims and encumbrances with respect to the issue thereof and shall not be subject to preemptive rights or other similar rights of stockholders of the Company and will not impose personal liability upon the holder thereof. The Conversion Shares and Warrant Shares are duly authorized and reserved for issuance, and, when issued upon conversion of or otherwise pursuant to the Preferred Shares (including upon exercise of the Investment Options) and upon exercise of or otherwise pursuant to the Warrants in accordance with the terms thereof, will be validly issued, fully paid and non-assessable, and free from all taxes, liens, claims and encumbrances and will not be subject to preemptive rights or other similar rights of stockholders of the Company and will not impose personal liability upon the holder thereof.

d. Acknowledgment of Dilution. The Company understands and

acknowledges the potentially dilutive effect to the Common Stock upon the issuance of the Conversion Shares upon conversion of or otherwise pursuant to the Preferred Shares (including upon exercise of the Investment Options) and upon issuance of the Warrant Shares upon exercise of or otherwise pursuant to the Warrants. The Company's directors and executive officers have studied and fully understand the nature of the Securities being sold hereunder. The Company further acknowledges that its obligation to issue Conversion Shares and Warrant Shares upon conversion of the Preferred Shares (including upon exercise of the Investment Options) or exercise of the Warrants in accordance with this Agreement, the Certificate of Designation and the Warrants is absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of the Company. Taking the foregoing into account, the Company's Board of Directors has determined, in its good faith business judgment, that the issuance of the Securities hereunder and under the Certificate of Designation and the Warrants and the consummation of the transactions contemplated hereby and thereby are in the best interest of the Company and its stockholders.

e. Series of Preferred Stock. The terms, designations, powers,

preferences and relative, participating and optional or special rights, and the qualifications, limitations and restrictions of each series of preferred stock of the Company (other than the Preferred Shares) are as stated in the Certificate of Incorporation, filed on or prior to the date hereof, and the Bylaws. The terms, designations, powers, preferences and relative, participating and optional or special rights, and the qualifications, limitations and restrictions of the Preferred Shares are as stated in the Certificate of Designation.

f. No Conflicts. The execution, delivery and performance of

this Agreement, the Registration Rights Agreement and the Warrants by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the filing of the Certificate of Designation and the issuance and reservation for issuance, as applicable, of the Preferred Shares, Conversion Shares (including those issuable upon exercise of the Investment Options) and Warrant Shares) will not (i) conflict with or result in a violation of any provision of the Certificate of Incorporation or By-laws or (ii) violate or conflict with, or result in a breach of any provision of, or constitute a default (or an event which with notice or lapse of time or both could become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture, patent, patent license or instrument to which the Company or any of its Subsidiaries is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations and regulations of any self-regulatory organizations to which the Company or its securities are subject) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected (except for such conflicts, defaults, terminations, amendments, accelerations, cancellations and violations as would not, individually or in the aggregate, have a Material Adverse Effect). Except as disclosed in Schedule 3(g), neither the Company nor any of its Subsidiaries is in violation of its Certificate of Incorporation, By-laws or other organizational documents and neither the Company nor any of its Subsidiaries is in default (and no event has occurred which with notice or lapse of time or both could put the Company or any of its Subsidiaries in default) under, and neither the Company nor any of its Subsidiaries has taken any action or failed to take any action that would give to others any rights of termination, amendment, acceleration or cancellation of, any

agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party or by which any property or assets of the Company or any of its Subsidiaries is bound or affected, except for possible defaults as would not, individually or in the aggregate, have a Material Adverse Effect. The businesses of the Company and its Subsidiaries, if any, are not being conducted, and shall not be conducted so long as a Buyer owns any of the Securities, in violation of any law, ordinance or regulation of any governmental entity. Except as specifically contemplated by this Agreement and as required under the 1933 Act and any applicable state securities laws, the Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court, governmental agency, regulatory agency, self regulatory organization or stock market or any third party in order for it to execute, deliver or perform any of its obligations under this Agreement, the Registration Rights Agreement or the Warrants in accordance with the terms hereof or thereof or to issue and sell the Preferred Shares and Warrants in accordance with the terms hereof and to issue the Conversion Shares upon conversion of or otherwise pursuant to the Preferred Shares (including those issuable upon exercise of the Investment Options) and the Warrant Shares upon exercise of or otherwise pursuant to the Warrants. Except as disclosed in Schedule 3(g), all consents, authorizations, orders, filings and registrations which the Company is required to obtain pursuant to the preceding sentence have been obtained or effected on or prior to the date hereof. The Company is not in violation of the listing requirements of the American Stock Exchange (the "AMEX") and does not reasonably anticipate that the Common Stock will be delisted by the AMEX in the foreseeable future. The Company and its Subsidiaries are unaware of any facts or circumstances which might give rise to any of the foregoing.

g. SEC Documents; Financial Statements. Except as disclosed in

Schedule 3(h), since July 31, 1997 the Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the Securities Exchange Act of 1934, as amended (the "1934 Act") (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements and schedules thereto and documents (other than exhibits to such documents) incorporated by reference therein, being hereinafter referred to as the "SEC Documents"). The Company has delivered to each Buyer true and complete copies of the SEC Documents, except for such exhibits and incorporated documents. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the statements made in any such SEC Documents is, or has been, required to be amended or updated under applicable law (except for such statements as have been amended or updated in subsequent filings prior to the date hereof). As of their respective dates, the financial statements of the Company included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with United States generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may not include

footnotes or may be condensed or summary statements) and fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments). Except as set forth in the financial statements of the Company included in the SEC Documents, the Company has no liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to July 31, 1999 and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected in such financial statements, which, individually or in the aggregate, are not material to the financial condition or operating results of the Company.

h. Absence of Certain Changes. Since July 31, 1999 there has

been no material adverse change and no material adverse development in the assets, liabilities, business, properties, operations, financial condition, results of operations or prospects of the Company or any of its Subsidiaries.

i. Absence of Litigation. There is no action, suit, claim,

proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company or any of its Subsidiaries, threatened against or affecting the Company or any of its Subsidiaries, or their officers or directors in their capacity as such, that could have a Material Adverse Effect. Schedule 3(j) contains a complete list and summary description of any pending or threatened proceeding against or affecting the Company or any of its Subsidiaries, without regard to whether it would have a Material Adverse Effect. The Company and its Subsidiaries are unaware of any facts or circumstances which might give rise to any of the foregoing.

j. Patents, Copyrights, etc.

(i) The Company and each of its Subsidiaries owns or possesses the requisite licenses or rights to use all patents, patent applications, patent rights, inventions, know-how, trade secrets, trademarks, trademark applications, service marks, service names, trade names and copyrights ("Intellectual Property") necessary to enable it to conduct its business as now operated (and, except as set forth in Schedule 3(k) hereof, to the best of the Company's knowledge, as presently contemplated to be operated in the future); there is no claim or action by any person pertaining to, or proceeding pending, or to the Company's knowledge threatened, which challenges the right of the Company or of a Subsidiary with respect to any Intellectual Property necessary to enable it to conduct its business as now operated (and, except as set forth in Schedule 3(k) hereof, to the best of the Company's knowledge, as presently contemplated to be operated in the future); to the best of the Company's knowledge, the Company's or its Subsidiaries' current and intended products, services and processes do not infringe on any Intellectual Property or other rights held by any person; and the Company is unaware of any facts or circumstances which might give rise to any of the foregoing. The Company and each of its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of their Intellectual Property.

(i) All of the Company's computer software and computer hardware, and other similar or related items of automated, computerized or software systems that are used or relied on by the Company in the conduct of its business or that were, or currently are being, sold or licensed by the Company to customers (collectively, "Information Technology"), are Year 2000 Compliant. For purposes of this Agreement, the term "Year 2000 Compliant" means, with

respect to the Company's Information Technology, that the Information Technology is designed to be used prior to, during and after the calendar Year 2000 A.D., and the Information Technology used during each such time period will accurately receive, provide and process date and time data (including, but not limited to, calculating, comparing and sequencing) from, into and between the 20th and 21st centuries, including the years 1999 and 2000, and leap-year calculations, and will not malfunction, cease to function, or provide invalid or incorrect results as a result of the date or time data, to the extent that other information technology, used in combination with the Information Technology, properly exchanges date and time data with it. The Company has delivered to the Buyer true and correct copies of all analyses, reports, studies and similar written information, whether prepared by the Company or another party, relating to whether the Information Technology is Year 2000 Compliant.

b. No Materially Adverse Contracts, Etc. Neither the Company nor any of its Subsidiaries is subject to any charter, corporate or other legal restriction, or any judgment, decree, order, rule or regulation which in the judgment of the Company's officers has or is expected in the future to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries is a party to any contract or agreement which in the judgment of the Company's officers has or is expected to have a Material Adverse Effect.

c. Tax Status. Except as set forth on Schedule 3(m), the Company and each of its Subsidiaries has made or filed all federal, state and foreign income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject (unless and only to the extent that the Company and each of its Subsidiaries has set aside on its books provisions reasonably adequate for the payment of all unpaid and unreported taxes) and has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and has set aside on its books provisions reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim. The Company has not executed a waiver with respect to the statute of limitations relating to the assessment or collection of any foreign, federal, state or local tax. Except as set forth on Schedule 3(m), none of the Company's tax returns is presently being audited by any taxing authority.

d. Certain Transactions. Except as set forth on Schedule 3(n) and except for arm's length transactions pursuant to which the Company or any of its Subsidiaries makes payments in the ordinary course of business upon terms no less favorable than the Company or any of its Subsidiaries could obtain from third parties and other than the grant of stock options disclosed on Schedule 3(c), none of the officers, directors, or employees of the Company is presently a party to any transaction with the Company or any of its Subsidiaries (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any corporation, partnership, trust or other entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

e. Disclosure. All information relating to or concerning the Company or

any of its Subsidiaries set forth in this Agreement and provided to the Buyers pursuant to Section 2(d) hereof and otherwise in connection with the transactions contemplated hereby is true and correct in all material respects and the Company has not omitted to state any material fact necessary in order to make the statements made herein or therein, in light of the circumstances under which they were made, not misleading. No event or circumstance has occurred or exists, nor is the Company in possession of any information, with respect to the Company or any of its Subsidiaries or its or their business, properties, prospects, operations or financial conditions, which has not been publicly announced or disclosed but under applicable law, rule or regulation, requires public disclosure or announcement by the Company (assuming for this purpose that the Company's reports filed under the 1934 Act are being incorporated into an effective registration statement filed by the Company under the 1933 Act).

f. Acknowledgment Regarding Buyers' Purchase of Securities. The Company

acknowledges and agrees that the Buyers are acting solely in the capacity of arm's length purchasers with respect to this Agreement and the transactions contemplated hereby. The Company further acknowledges that no Buyer is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement and the transactions contemplated hereby and that any statement made by any Buyer or any of their respective representatives or agents in connection with this Agreement and the transactions contemplated hereby is not advice or a recommendation and is merely incidental to the Buyers' purchase of the Securities and has not been relied upon by the Company, its officers or directors in any way. The Company further represents to each Buyer that the Company's decision to enter into this Agreement has been based solely on the independent evaluation of the Company and its representatives.

g. No Integrated Offering. Neither the Company, nor any of its affiliates,

nor any person acting on its or their behalf, has directly or indirectly made any offers or sales of any security or solicited any offers to buy any security under circumstances that would require registration under the 1933 Act of the issuance of the Securities to the Buyers. The issuance of the Securities to the Buyers will not be integrated with any other issuance of the Company's securities (past, current or future) for purposes of any stockholder approval provisions applicable to the Company or its securities.

h. No Brokers. The Company has taken no action which would give rise to

any claim by any person for brokerage commissions, finder's fees or similar payments relating to this Agreement or the transactions contemplated hereby, except for dealings with Intercoastal Financial Services Co., whose commissions and fees will be paid for by the Company.

i. Permits; Compliance. The Company and each of its Subsidiaries is in

possession of all franchises, grants, authorizations, licenses, permits, easements, variances, exemptions, consents, certificates, approvals and orders necessary to own, lease and operate its properties and to carry on its business as it is now being conducted (collectively, the "Company Permits"), and there is no action pending or, to the knowledge of the Company, threatened regarding suspension or cancellation of any of the Company Permits. Neither the Company nor any of its Subsidiaries is in conflict with, or in default or violation of, any of the Company Permits, except for any such conflicts, defaults or violations which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. Since July 31, 1999 neither the Company nor any of its Subsidiaries has received any notification with respect